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Presented by Jon Fleischman

APPEALS COURT OVERTURNS 1550% TAX HIKE ON FLAVORED BEERS

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May 2, 2012

[Publisher's Note: As part of an ongoing effort to bring original, thoughtful commentary to you here at the FlashReport, I am pleased to present this column from Board of Equalization Member Michelle Steel. - Flash]

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Despite serious constitutional and legal questions, the Board of Equalization (BOE), in 2007, approved a 1550 percent tax increase on "flavored malt beverages."

Flavored malt beverages are drinks such as Mike's Hard Lemonade and Smirnoff Ice – beer-based drinks with flavor added. In 2008, the BOE – on a party-line vote – changed the definition of these drinks, which the Department of Alcoholic Beverage Control (ABC) considers beer, to "distilled spirits," for the purpose of taxation. Supporters said the change in definition could raise up to $41 million. It didn't.

Instead, it raised a lawsuit, Diageo-Guinness USA Inc., et al., v. State Board of Equalization. The plaintiffs in the suit argued that the BOE had overstepped its legal authority in changing the definition of flavored malt beverages. They argued that only the ABC has jurisdiction to classify alcoholic beverages in California.

The California Court of Appeals for the Third District agreed. In a decision released early Monday morning, the Court reversed an earlier trial court decision upholding the regulation.

The Court ruled that the BOE's attempt to change the definition of "distilled spirits" did not withstand even the "relaxed scrutiny" which a court gives to quasi-legislative actions such as regulations. They ordered the trial court to rule in favor of the plaintiffs, and ordered BOE to pay the plaintiffs costs on appeal.

Because of this regulation, flavored malt beverage makers were forced to reformulate their drinks to avoid paying increased taxes on formulas deemed by the BOE to be "distilled spirits." The BOE had to hire staff to study each producer's formulas to check if they met the standard for higher taxation.

Business owners with licenses to sell only beer and wine were faced with the confusion, and the cost, of stocking and selling products that their licenser called beer, but their tax collector called a “distilled spirit,” something they weren’t legally allowed to sell.

It was a waste of time and money, and it led to even further complications for beverage makers and businesses.

Just last year, in a four to one decision, the BOE redefined some wines as “distilled spirits” calling the move a “clarification” that would treat flavored wines just like flavored malt beverages. It was just another complication. Though the wine regulation wasn’t the subject of this most recent case, the two regulations are intimately related, and the wine regulation could be overturned as a result.

The legal battle isn’t over, but this is an important step in stemming the tide of regulatory overreach that hurts businesses across this state and makes California an increasingly difficult state in which to live.

This decision will help the over 35,000 small businesses in California withlicenses to distribute beer and wine, by making it easier for them to comply with the state’s alcohol and tax laws. And it will provide a much needed check to regulatory agencies and elected officials intent on increasing taxes by any means. We are still a government of Laws and not of Men.
